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Colorado General Assembly

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MEMORANDUM

TO: Carla Cecilia Castedo Ribero and Robert DuRay
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: December 29, 2017
SUBJECT: Proposed initiative measure 2017-2018 #96, concerning legislative reapportionment

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of the Colorado Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Constitution appear to be:

1. To require state legislative districts be drawn by a nonpartisan reapportionment commission (commission);

2. That in drawing districts, the commission must: First, comply with the United States and Colorado constitutions and the federal "Voting Rights Act of 1965"; then prioritize communities of interest that need state legislative representation; and then consider preserving political subdivisions and the competitiveness of each district;
3. To establish the number, appointment process, and qualifications for members of the commission, including requiring that four members be from each of the state's two largest political parties and that four members be unaffiliated with any political party;
4. To require, prior to adopting a plan, the commission hold public hearings throughout the state, including at least three in each congressional district, one west of the continental divide, and one south of El Paso County and east of the continental divide;
5. To require the public hearings throughout the state to be broadcast live, and recorded for later viewing, on the commission's website;
6. To establish a process for the Colorado Supreme Court to review and approve plans;
7. To provide that commissioners are subject to anti-bribery and abuse of public office criminal statutes, and that commissioners and commission staff are subject to the state's open records and open meetings laws; and
8. To require persons who receive compensation for advocating to the commission, commissioners, or the commission staff to register with the Colorado Secretary of State and disclose the compensation and from whom the compensation was received.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Reapportionment is the act of allocating seats in a legislative body among established districts, where the boundaries do not change, and redistricting is the act of drawing new political district boundaries. Section 45 of article V of the Colorado Constitution states that the State Senate shall not have more than

- 35 members and the State House of Representatives shall not have more than 65 members, one from each district; the commission would not be allocating seats in the legislative body among established districts, but would rather be drawing new political boundaries. In light of this difference, would the proponent consider renaming the commission created in this proposed initiative the Colorado Nonpartisan Legislative District Redistricting Commission, or something similar?
3. "Nonpartisan" means free from party affiliation, bias, or designation. Is it accurate to call the commission nonpartisan when eight members are required to be members of specified political parties?
 4. Under the existing constitutional provisions, the Colorado Supreme Court established priorities for the criteria for drawing districts. Do the proponents intend that the Court will establish the priorities for the criteria established in this proposed initiative? If not, what is the priority of the criteria for drawing districts? Where in priority do the requirements in section 47 (2) for compactness and aggregate linear distances of district boundaries fall?
 5. Section 47 (3)(II) requires the commission to consider whether the district drawn will be competitive. Is it the proponents' intent that the commission look at the competitiveness of each district individually? Or should the commission look at a plan as a whole and consider whether it draws the most number of competitive districts? Or is there something else that the commission is to consider?
 6. If both this measure and proposed initiative 2017-2018 #95 pass, may a person apply to be a member of both the nonpartisan reapportionment commission and the citizens' redistricting commission? If so, once a person was appointed to one of the commissions, would the person then be ineligible to serve on the second? Or do the proponents envision that a person appointed to both could choose the commission on which he or she serves?
 7. Under section 48 (1)(b), nonpartisan staff is to determine whether an applicant meets the qualifications to be a member of the commission. How will staff determine if an applicant has been compensated by a member of, or served on a campaign committee to elect a candidate to, the General Assembly under section 48 (1)(i)(III)? May staff rely upon an applicant's statement in his or her application that the applicant is not disqualified under those provisions?
 8. In section (48) (1)(c)(I), what constitutes "experience in representing or advocating the interests of groups, organizations, or associations . . ." May

staff limit the pool of applicants based on the extent of such experience or is an applicant who can show any experience qualified to be in the pool?

9. Under section 48 (1)(b), how many applicants do the proponents envision being in the pool limited by nonpartisan staff?
10. Subsections (1)(e), (3)(a), (3)(b), and (3)(d) of section 48 indicate dates but do not specify a year. Do the proponents believe that the measure is clear or should language such as "in the year following the census," "the following," or "the next" be added to clarify the dates?
11. Section 48 (1)(e) directs legislative leaders to pick ten names of persons registered with one of the two largest political parties to be submitted to the Chief Judge of the Colorado Court of Appeals:
 - a. Is a leader to pick only names from his or her political party, or can the leader pick names from either political party?
 - b. Can an applicant be picked by more than one leader?
 - c. What if there are fewer than forty names remaining in the pool of qualified applicants who are members of the state's two largest political parties?
 - d. What if there are fewer than ten names remaining in the pool of qualified candidates who are not affiliated with one of the two largest political parties?
12. Section 48 (1)(f) requires that no commissioner may be chosen if a previously appointed commissioner resides in the same congressional district. Under section 48 (1)(e), the Chief Judge of the Colorado Court of Appeals makes the final six appointments in no particular order. Does the limitation in the first sentence of section 48 (1)(e) only apply to the first six appointments under section 48 (1)(d)? Should the restriction on no more than two commissioners from the same congressional district and the requirements that one commissioner must reside in each congressional district, west of the continental divide, and south of El Paso county be directed to the Chief Judge's appointments?
13. Section 48 (1)(g) directs that the "pools" should reflect "the state's then-existing racial and gender diversity." Is this an additional qualification that nonpartisan staff is to consider in limiting the pools under section 48 (1)(c)?
14. Section 48 (1)(h) concerns filling vacancies on the commission:

- a. Is the pool for unaffiliated commissioners chosen by lot by nonpartisan staff the entire pool of unappointed and unaffiliated applicants remaining under section 48 (1)(d)?
 - b. Are legislative leaders allowed to add to the pool of selected names, or is the Chief Judge limited to the names originally submitted?
- 15. Under the current process, the reapportionment commission adopts a preliminary plan and then conducts public hearings throughout the state. Section 48 (2)(a) prohibits the commission from adopting "a plan" until at least three hearing have been conducted in each congressional district. Do the proponents intend that this prohibition apply to preliminary plans or only a final plan?
- 16. Section 48 (3)(a) provides that the four unaffiliated commissioners may veto a plan approved by the remaining eight commissioners. How do the proponents envision the four unaffiliated commissioners exercising their veto power? Would they take a separate vote or would all four voting against the plan be sufficient? Would the proponents' intent be accomplished by requiring the super-majority to include at least one unaffiliated commissioner?
- 17. Subsections (3)(b) and (3)(c) of section 48 require the Colorado Supreme Court to determine whether a plan "fosters fair and effective representation." What do proponents mean by "fair and effective representation"?
- 18. Section 48 (4)(b) makes "the commission, the commissioners, and the commission's staff" subject to the state's open meetings and open records laws:
 - a. Is it the proponents' intent that any meeting between a commissioner and a member of the commission's staff is open to the public?
 - b. Is it the intent of the proponents that any meeting between two or more members of the commission staff is public?
 - c. Is it the proponents' intent that notice be given prior to any meeting at which more than half of the commission's staff is expected to be present?
 - d. Is it the proponents' intent that any preliminary draft of a plan prepared by the commission's staff is a public record?
- 19. Most of the dates referenced in this proposed initiative say "by [x date]," but section 48 (4)(e) says "On or before February 16." Is there a reason why this

language was chosen? Is the choice intended to have a different meaning than the word "by" for the other dates referenced?

20. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Colorado Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.

- a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Colorado Legislative Council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below:

1. When amending section 47, indicate that the new subsection (2) was formerly subsection (1) as follows:

 (1) (2) Each district ~~shall~~ MUST be
2. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. If a subsection is written as an introductory portion, it sets up the subsequent language and ends with a colon as such:

(3) ... FINALLY, THE COMMISSION MUST CONSIDER FACTORS INCLUDING BUT NOT LIMITED TO:

(a) THE PRESERVATION OF POLITICAL SUBDIVISIONS ...; AND

(b) WHETHER THE DISTRICTS DRAWN WILL BE COMPETITIVE.

3. In section 48 (1)(b) staff is to determine whether applicants meet the qualification in "THIS SUBSECTION (4)." The language is in subsection (1), and subsection (4) does not appear to include qualifications. Did the proponents mean to say "THIS SUBSECTION (1)"?
4. In section 48 (6)(f), the proper name of the legislative council is simply "legislative council." Would the proponents consider changing the name from "office of legislative council" to "legislative council"?
5. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.

For example:

(i) NO PERSON MAY BE APPOINTED TO, OR WILL BE PERMITTED TO SERVE ON, THE COMMISSION IF HE OR SHE:

(I) IS A CANDIDATE FOR THE STATE SENATE OR STATE HOUSE OF REPRESENTATIVES;

6. The words "nonpartisan" and "non-partisan" are used interchangeably; to keep the language in the proposed initiative consistent, proponents may want to use one form of the word.